IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

Crl.MC.No. 3220 of 2007()

ST.1720/2003 of JUDL.MAGISTRATE OF FIRST CLASS, PERUMBAVOOR

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PETITIONER:

I.J.KURUVILA,
PROPRIETOR, AGED 52 YEARS, J.K.RUBBERS,
ILLIPPARAMBIL HOUSE, KURUPPAMPADY P.O.,
PERUMBAVOOR.

BY ADV. SRI.S.SHANAVAS KHAN

RESPONDENTS:

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1. K.C.GEORGE,
PROPRIETOR, KULAVELIL TRADERS, AIRAPURAM P.O.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.K.SREESAKUMAR
BY P.P. SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/10/2007 ALONG WITH CRMC NOS.3221 & 3222 OF 2007 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. Nos. 3220, 3221 & 3222 OF 2007

Dated this the 18th day of October, 2007

ORDER

The common petitioner has been found guilty, convicted and sentenced in three separate prosecutions - all initiated by the same complainant/respondent herein. The verdict of guilty, conviction and sentence have now become final with the order passed by this Court in the revision petitions. The petitioner in each case now faces a sentence of imprisonment till rising of court. There is also a direction to pay compensation and in default, to undergo simple imprisonment for a period of six months each. The petitioner was granted time by this Court in the orders passed in the revision petitions to appear before the learned Magistrate and receive the sentence. He did not appear within the stipulated time. The learned Magistrate obviously is now taking steps to execute

the sentence imposed.

2. It is at this stage that the petitioner has come before this Court. The learned counsel for the petitioner submits that the petitioner/accused and the respondent/complainant have settled their disputes and the complainant has compounded the offence alleged against the petitioner. In these circumstances, it is prayed that the composition may be accepted invoking the dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982).

3. **Sabu George v. Home Secretary (**2007 (1) KLT 982), I must repeat, is not authority for the proposition that any and every post revision composition can be accepted as a rule of the thumb. The facts of the said case were peculiar and exceptional. Notwithstanding the composition, the accused would have been obliged to undergo a substantive sentence of imprisonment for a long period. This Court in such situation felt that the powers under Sec.482 of the Cr.P.C. can be invoked to avoid such an unjust course. The dictum in **Sabu George v. Home Secretary (**2007 (1) KLT 982) can have no application whatsoever in this case where the petitioner faces only a sentence of imprisonment till rising of court. The petitioner can appear before the learned

Magistrate and undergo the said sentence of imprisonment till rising of court. What remains is only the liability to pay compensation.

4. The learned counsel for the petitioner asserts and the learned counsel for the respondent/complainant accepts that the amount of compensation has already been paid. If that be so, there can be no question of executing any default sentence. The direction was only to pay compensation and there is no specific direction to deposit the amount of compensation. If the petitioner/accused and the respondent/complainant satisfy the learned Magistrate that the compensation amounts ordered to be paid in these three cases have already been paid, there can be no question of the default sentence being executed against the petitioner.

5. The learned counsel for the petitioner submits that the time prescribed by this Court in the revision petitions for the petitioner to appear before the learned Magistrate has already expired. But that does not at all mean that the default sentence can be imposed even when the payment has been effected. The position has been made clear in the decision reported **Girish v. Muthoot Capital Service (P) Ltd.,** (2007 (1) KLT 16). There can be no further doubt on that proposition.

6. To sum up, it is for the petitioner to appear before the learned Magistrate to undergo the substantive sentence of imprisonment till rising of court. It is for the petitioner further to report before the learned Magistrate along with the complainant that the liability for payment of compensation has already been paid and discharged. Needless to repeat, there shall be no question of executing the default sentence thereafter.

7. With the above observations, these Crl.M.Cs. are dismissed.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge